

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Those Public Highway Crossings of the Tracks of the Soo Line Railroad Co. lying west of Swarthout Road in the Town of Fountain Prairie, Columbia County

9150-RX-534

On the Commissioner's Own Motion to Consider the Closure of the Public Crossing of the Soo Line Railroad Co. Tracks with Swarthout Road in the Town of Fountain Prairie, Columbia County

9150-RX-493

FINAL DECISION (9150-RX-534)

RESCISSION OF ORDER AND
SUPPLEMENTAL ORDER (9150-RX-493)

In 2000, the Commissioner of Railroads, Rodney W. Kreunen, directed the staff of the Office of the Commissioner of Railroads (OCR) to investigate and conduct a hearing regarding the potential closure of the public crossing of the Soo Line Railroad Co. (Soo Line) tracks with Swarthout Road in the Town of Fountain Prairie, Columbia County (crossing no. 390 658J). Jurisdiction: Secs. 195.28 and 195.29, Stats.

On April 3, 2001, the Commissioner issued an order that required the installation of new warning devices and the relocation of the public crossing of the Soo Line Railroad Co. (Soo Line) tracks with Swarthout Road in the Town of Fountain Prairie, Columbia County by October 31, 2001 (Crossing No. 390 658J). The Commissioner later extended the deadlines to July 31, 2004.

For the reasons set forth below, the Commissioner hereby rescinds the order for the relocation of the Swarthout Road crossing and orders its closure.

On August 14, 2003, the Office of the Commissioner of Railroads (OCR) conducted a status conference with the parties in this matter. The status conference was attended by representatives of the Town of Fountain Prairie, the Village of Fall River, the Wisconsin Department of Transportation, the Soo Line Railroad Co., and the Office of the Commissioner of Railroads. Douglas S. Wood presided at the status conference.

Subsequently, the Town, Soo Line, and the OCR agreed to a stipulation. The purpose of this stipulation was to allow the OCR to issue an order with respect to Seier Road, Sauer Road, Swarthout Road, CTH 'CD', and Mohr Road without further hearing. The consideration of the closure of the Fields Road crossing was not covered by this stipulation, but will be considered in a separate proceeding by the Office of the Commissioner of Railroads.

The following terms of the stipulation were agreed to by the Soo Line Railroad Co., the Town of Fountain Prairie, and the Commissioner of Railroads.

“The Soo Line Railroad Co., the Town of Fountain Prairie, and the Office of the Commissioner of Railroads hereby agree to:

For the Seier Road bridge: The Soo Line will pay up to \$200,000 to cover the 20% local match on behalf of the Town of Fountain Prairie. The Town will perform routine maintenance of the Seier Road bridge. Cost sharing for the future replacement of this bridge will be determined at the time the bridge requires replacement.

For the Sauer Road bridge: The Soo Line and the Town of Fountain Prairie will each pay one-half of the cost for the Sauer Road bridge and approaches not provided by the Wisconsin Department of Transportation. The Soo Line contribution will be capped at \$267,500. The Town will perform routine maintenance of the Sauer Road bridge. Cost sharing for the future replacement of this bridge will be determined at the time the bridge requires replacement.

For the Swarthout Road at-grade crossing: The Office of the Commissioner of Railroads will issue an order for the closure of the Swarthout Road at-grade crossing as part of the Sauer Road bridge project. The order for the realignment of Swarthout Road will be rescinded. The Soo Line and the Town of Fountain Prairie will support the closure of the Swarthout Road at-grade crossing as part of the Sauer Road bridge project. The project will pay to remove the roadway and the crossing. If necessary the Office of the Commissioner of Railroads will apportion any other costs for the closure.

For the CTH “CD” and Mohr Road at-grade crossings: The Office of the Commissioner of Railroads will order the installation of automatic flashing lights and gates.”

(End of stipulation excerpt).

Columbia County successfully applied to the Wisconsin Department of Transportation (DOT) on behalf of the Town of Fountain Prairie for funds to replace and build highway bridges over the Soo Line Railroad Co. tracks at Seier Road and Sauer Road.

Seier Road. The DOT has approved funding for 80% of the costs to reconstruct the Seier Road bridge. The Soo Line Railroad Co. will pay up to \$200,000 to cover the 20% local match on behalf of the Town of Fountain Prairie. The Soo Line Railroad Co. will also pay for real estate acquisition, provided that their total contribution does not exceed \$200,000. The Town agreed to perform routine maintenance. Cost sharing for the future replacement of this reconstructed bridge will be determined at the time the bridge requires replacement. It is expected the Seier Road bridge will be reconstructed in about 2007.

Sauer Road. The DOT is expected to provide approximately \$355,000 in safety funds toward the cost of constructing a bridge at the approximate location of the former Sauer Road bridge. It is estimated that this bridge will cost approximately \$1,000,000 for design, construction, real estate and utilities, including approach work and a connecting roadway to Swarthout Road. The Soo Line and the Town agreed to split any remaining cost not paid by the State of Wisconsin. The Soo Line capped its contribution at \$267,500.

The Wisconsin DOT has agreed to provide 80% of the remaining cost for the Sauer Road bridge. The Town and the Soo Line will split the local match. It is anticipated that the Town and Soo Line will each pay about \$64,450.

It is anticipated that the Sauer Road bridge will be reconstructed in the 2005 construction season. It is anticipated that the existing crossing of Swarthout Road would be closed to public travel when construction commences in May or June 2005.

On December 29, 2003, the Office of the Commissioner of Railroads ordered the Soo Line Railroad Co. to install and maintain 12" LED automatic flashing lights with gates and constant warning time circuitry at the crossings of its tracks with Mohr Road (Crossing No. 390 664M / MP 158.07) and CTH 'CD' (Crossing No. 390 660K / MP 154.91) in the Town of Fountain Prairie, Columbia County by December 31, 2004. Those signal installations are being funded with state and federal safety funds.

In summary, the reconstruction of the Seier Road and Sauer Road bridges over the Soo Line Railroad Co. tracks will promote public safety and convenience by providing two grade-separated routes across the Soo Line Railroad Co. tracks in the Town of Fountain Prairie. The reconstruction of the Sauer Road bridge with a connecting roadway to Swarthout Road allows for the closure of the Swarthout Road crossing. This closure will promote public safety and convenience by eliminating a point of conflict between trains and highway vehicles. The connecting roadway will ensure adequate and convenient access for all Swarthout Road users.

Source of funding: The costs shall be split in accordance with the stipulation signed by the parties, provided that the Soo Line and the Town of Fountain Prairie may amend the terms as necessary to implement these projects.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

1. That the reconstruction of the Seier Road bridge over the Soo Line Railroad Co. tracks in accordance with the design plans of the Town of Fountain Prairie in the Town of Fountain Prairie, Columbia County will promote public safety and convenience.
2. That the reconstruction of the Sauer Road bridge over the Soo Line Railroad Co. tracks in accordance with the design plans of the Town of Fountain Prairie in the Town of Fountain Prairie, Columbia County will promote public safety and convenience.

3. That the closure of the Swarthout Road at-grade crossing of the Soo Line Railroad Co. tracks, in conjunction with the reconstruction of the Sauer Road bridge, in accordance with the design plans of the Town of Fountain Prairie in the Town of Fountain Prairie, Columbia County will promote public safety and convenience.

4. That it is reasonable that the costs be shared as set forth in the stipulation of the parties.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the orders in docket 9150-RX-493 that required the installation of automatic flashing lights and gates at and the relocation of the crossing at-grade of Swarthout Road with the Soo Line Railroad Co. tracks in the Town of Fountain Prairie, Columbia County (Crossing No. 390 658J) are **hereby rescinded**.

2. That the **Town of Fountain Prairie** shall close the Swarthout Road at-grade crossing as part of the Sauer Road bridge project.

3. That the **Town of Fountain Prairie** shall construct a grade-separated crossing of **Sauer Road** with the tracks of the Soo Line Railroad Co. in the Town of Fountain Prairie, Columbia County by **December 31, 2005** (Crossing 390 659R / MP 154.51).

4. That the **Town of Fountain Prairie** shall construct a grade-separated crossing of **Seier Road** with the tracks of the Soo Line Railroad Co. in the Town of Fountain Prairie, Columbia County by **December 31, 2007** (Crossing No. 390 662Y MP 156.72).

5. That the **Soo Line Railroad Co.** shall remove the crossing surface and the roadway approaches within its right-of-way for the crossing at-grade of **Swarthout Road** with its tracks in the Town of Fountain Prairie, Columbia County at a time in conjunction with the Sauer Road bridge reconstruction (Crossing no. 390 658J / MP 154.28).

6. That the costs for the reconstruction of the Sauer Road bridge, the Seier Road bridge, and the closure of the Swarthout Road at-grade crossing shall be apportioned in accordance with the terms of the stipulation signed by the parties, except that the Soo Line Railroad Co. shall pay any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly. The **Soo Line Railroad Co. and the Town of Fountain Prairie** may amend the terms of the stipulation by joint agreement as necessary to implement these projects.

7. That jurisdiction is retained.

Dated at Madison, Wisconsin, _____.

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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